



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

WPSC - Martins Ferry

US EPA RECORDS CENTER REGION 5



1013424

REPLY TO THE ATTENTION OF:

C-14J

April 8, 2008

VIA FACSIMILE  
AND U.S. MAIL

Kenneth Komoroski, Esq.

~~Kirkpatrick & Lockhart Preston Gates Ellis, LLP~~

Henry W. Oliver Building

535 Smithfield Street

Pittsburgh, Pennsylvania 15222-2312

Re: Wheeling-Pittsburgh Steel Company  
Access for RCRA VSI at Ohio Facilities

Dear Mr. Komoroski:

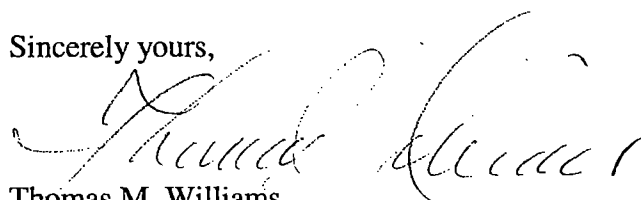
This acknowledges receipt of your letter of April 1, 2008, regarding the above-referenced matter. In response to your first point, in which you protest the U.S. Environmental Protection Agency's application for and execution of administrative warrants for access at the Martins Ferry and Yorkville plants and contend that the gesture was unnecessary, I reply that the gesture was indeed necessary, particularly in view of (1) your *ex parte* examination and exclusion of our inspectors from the Yorkville plant on April 23, 2007, following your written statement to me that the inspection there would proceed, (2) the position recited in your more recent correspondence, to the general effect that a facility can exclude inspectors on the mere assertion that a proposed RCRA 3007 inspection is in fact the exercise of corrective action authority under RCRA 3008(h), and (3) your position that a facility can select which EPA inspectors it will allow on its premises. We regret that, even under its new ownership, WPSC has persisted in an unlawfully narrow interpretation of RCRA access authority.

In response to your second point, U.S. EPA is willing in principle to meet with WPSC and, if appropriate, Essmark, Inc., representatives, much as we have been pleased to meet in the past, but we intend first to conclude the information-gathering activities we attempted to begin approximately one year ago. In this respect, certain questions in the April 2007 written requests for information under RCRA 3007 remain unanswered; we still seek answers to them. We also intend to follow up on questions that WPSC declined to answer during the Martins Ferry and Yorkville inspections. Finally, you correctly anticipate that we seek RCRA entry to and

inspection of the Steubenville and Mingo Junction plants.<sup>1</sup> Since we prefer consensual access, please let me know whether your client will now consent to an inspection, at a reasonable time, of the entire establishments, without limitation to areas you might otherwise contend are "appropriate," or imposition of other conditions unrelated to safety equipment. We would like to conduct a Visual Site Inspection at Steubenville and Mingo Junction during the week of May 12, 2008.

Once these inspections are completed and full responses are made to our requests for information, we will have a much better record on which to base a meeting. We are also willing to consider records of the consultants' activities you reference in your March 14<sup>th</sup> letter, as well as materials you submitted to Ohio EPA as part of your application for VAP participation. It is EPA's hope that such a meeting will then be very productive, *i.e.*, be directed to a successful course of addressing environmental conditions at the four facilities.

Sincerely yours,



Thomas M. Williams  
Associate Regional Counsel

cc: M. Mikulka (LCD-9J)  
J. Cisneros (LCD-9J)  
K. Vezner (C-14J)  
P. Moore (OECA)(via pouch mail)  
B. Ball (OH OAG)  
J. Stark (OUSA-SD OH)

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<sup>1</sup> Again, we generally reserve the authority to enter these facilities and, if necessary, address conditions there, under CERCLA, 42 U.S.C. § 9601 *et seq.*



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REPLY TO THE ATTENTION OF:

MAR 04 2008

C-14J

BY FACSIMILE AND  
U.S. MAIL

Kenneth Komoroski, Esq.  
Kirkpatrick & Lockhart Preston Gates Ellis, LLP  
Henry W. Oliver Building  
535 Smithfield Street  
Pittsburgh, Pennsylvania 15222-2312

Re: Wheeling-Pittsburgh Steel Company  
Request for Access for RCRA VSI at Yorkville and Martins Ferry, Ohio Facilities

Dear Mr. Komoroski:

I write in reply to your letter of January 8, 2008. As I have already told you, EPA wishes to perform a Visual Site Inspection (VSI) at the Yorkville and Martins Ferry facilities in the exercise of its authority under section 3007(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6907(a). Depending on the results of that and the Preliminary Assessment, EPA may elect to enforce the provisions of RCRA, including corrective action under RCRA section 3008(h), investigation under section 3013, cleanup under section 7003, and regulatory enforcement under section 3008(a).<sup>1</sup> Again, as I have told you in the past, EPA can use the results of a PA/VSI for any of these purposes.

While Ohio has an authorized RCRA program, EPA retains the authority to enforce it. Additionally, as I presume you are aware, certain RCRA provisions, such as section 3013, are not delegated to the states. Accordingly, EPA retains the authority to enforce RCRA against facilities in Ohio.

In view of that, EPA will not agree, as a precondition to obtaining access under the authority Congress has given it, to waive any of its other statutory authorities or provide a covenant not to sue. Your correspondence suggests that you believe Wheeling-Pittsburgh has a defense to the assertion of RCRA corrective action authority, but it remains that EPA is at this point conducting a preliminary assessment, and EPA will not take a position on the applicability of a particular statutory provision without first completing its own examination of relevant facts. In any event,

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<sup>1</sup> EPA can also use the PA/VSI to support the exercise of its authority under CERCLA, 42 U.S.C. § 9601 *et seq.* While EPA is presently exercising its inspection authority under RCRA, we expressly reserve CERCLA authority.

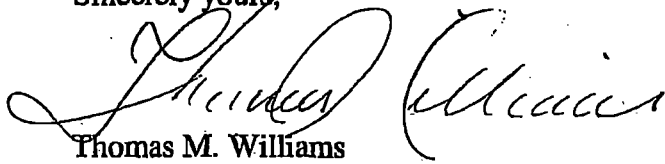
quite apart from the question of the scope of corrective action authority, your letter omits any explanation of why EPA cannot engage in regulatory enforcement or the exercise of authority under section 3013 at the two facilities.<sup>2</sup>

To the extent Wheeling-Pittsburgh would point to its proposed participation in the Ohio Voluntary Action Program (VAP) as a basis for excluding EPA from its facilities, such reliance is misplaced. First, as you must know from reviewing the Memorandum of Agreement, it creates no right or benefit, substantive or procedural, enforceable against EPA or Ohio EPA, and does not relieve any facility from RCRA compliance. In any event, EPA understands that Ohio EPA has now concluded that Wheeling-Pittsburgh is ineligible for participation in the VAP, and that a letter stating as much has been sent to you.

For the record, I disagree with your interpretation of the U.S. Department of Justice's June 26, 2007, letter. Nowhere does it say that WPSC "should proceed with the appropriate agency for each individual issue or matter." Instead, it says that in view of significant disagreement, particularly with regard to RCRA, "the Agencies have elected to terminate these global [settlement] negotiations and to address the matters they have raised through more traditional means." Barring access to our inspectors and then, without notice to EPA, proposing to enter a voluntary, "Brownfields"-type cleanup program, does not constitute a "traditional means" of resolving long-standing concerns over RCRA compliance, such as those regarding the lay-down yard at Martins Ferry and the apparent release of spent pickle liquor at Yorkville.

We do appreciate, though, that by seeking participation in the VAP, you recognize that there are areas at Wheeling-Pittsburgh's Ohio facilities that require investigation, characterization and, possibly, clean-up. With that in mind, I suggest that the more prudent course of action is for Wheeling-Pittsburgh Steel Corporation to cooperate with EPA and allow its contractors to complete the Visual Site Inspections at Martins Ferry and Yorkville as soon as possible. With those tasks accomplished, we may then discuss any sampling Wheeling-Pittsburgh has undertaken and the closure plans and other materials that were prepared for Ohio EPA. In the meantime, EPA's request for access remains pending; please let me know of your client's intentions to comply as soon as possible.

Sincerely yours,



Thomas M. Williams  
Associate Regional Counsel

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<sup>2</sup> Your suggestion that section 7003 cannot apply because no "imminent hazard has been alleged" overlooks the fact that EPA may need to investigate, as by exercising its section 3007(a) inspection authority, before it makes such an "allegation."



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REPLY TO THE ATTENTION OF

C-14J

December 19, 2007

VIA FACSIMILE  
AND U.S. MAIL

Kenneth Komoroski, Esq.

Kirkpatrick & Lockhart Preston Gates Ellis, LLP

Henry W. Oliver Building

535 Smithfield Street

Pittsburgh, Pennsylvania 15222-2312

Re: Esmark, Inc., a/k/a Wheeling-Pittsburgh Steel Company  
Request for Access for RCRA VSI at Yorkville and Martins Ferry, Ohio Facilities

Dear Mr. Komoroski:

Thank you for the voice mail message that you left on December 6, 2007, regarding the above matter. As you recited in that message, Mr. Michael Mikulka had contacted Bud Smith by telephone earlier that day and repeated U.S. EPA's request for access to the Yorkville facility to conduct a Visual Site Inspection (VSI). In this regard, we understand that the merger of Wheeling-Pittsburgh Steel Company into Esmark is now complete, and so we seek the current owner's consent for access to perform the VSI. For your information, we also seek entry to the Martins Ferry facility to perform a VSI.

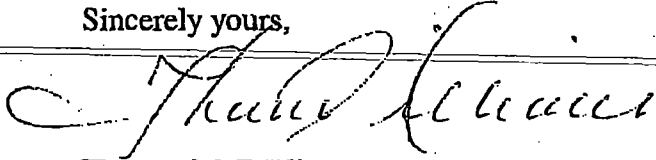
Contrary to your statement in your message, EPA is not presently seeking access to perform a RCRA Facility Assessment. Rather, we wish at this time to conduct a VSI as part of the Preliminary Assessment / Visual Site Inspection process. In any event, I understand from your message that Wheeling-Pittsburgh, or Esmark, Inc., is now willing to allow EPA employees, but not EPA contractors, to enter the facilities. The agency's authority for entering the facilities is Section 3007 of RCRA, 42 U.S.C. § 6927(a), which authorizes "officers, employees *or representatives*" (emphasis added) of the EPA, duly designated by the Administrator, to enter at reasonable times any establishment or other place where hazardous wastes are or have been generated, stored, treated, disposed of, or transported from. Thus, the plain statutory language recognizes that persons other than EPA employees may exercise RCRA inspection authority, so long as they are duly designated; it does not contemplate the distinction you have drawn between agency employees and contractors.

With that in mind, we again request access to conduct a RCRA VSI, which would involve an

EPA employee, such as Mr. Mikulka, entering the Yorkville and Martins Ferry facilities at a reasonable time, accompanied by an authorized agency contractor, to conduct a visual tour of the facilities, which may involve taking photographs. I understand an Ohio EPA employee may participate as well.

Accordingly, I request that you kindly let me know, in writing, whether Esmark, Inc., or whichever entity now controls the Martins Ferry and Yorkville, Ohio facilities, will consent to EPA employees and contractors conducting a VSI at these two facilities. We would like to begin the VSIs during the week of January 14, 2008, and so I request that you reply before that date. As usual, if there are any arrangements that need to be made in advance with Mr. Smith regarding protective gear or other safety concerns, we are prepared to discuss them.

Sincerely yours,



Thomas M. Williams  
Associate Regional Counsel

cc: Kris Vezner  
Michael Mikulka